No. 80-2190

Office-Supreme Court, U.S.
FILED
SEP 21 1981
ALEXANDER L. STEVAS,
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

HADDON HOUSE FOOD PRODUCTS, INC.
and FLAVOR DELIGHT, INC.,

Petitioners

v.

NATIONAL LABOR RELATIONS BOARD and
TEAMSTERS LOCAL UNION NO. 115, a/w
International Brotherhood of Teamsters,
Chauffeurs, Warehousemen and Helpers of America,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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LOCAL 115'S SUPPLEMENTAL MEMORANDUM

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Teamsters Local Union No. 115

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LOCAL 115'S SUPPLEMENTAL MEMORANDUM

On September 8, counsel for Local 115 received the Company's Supplemental Brief informing the Court that on July 24 it executed a contract with Local Union No. 80, Food and Allied Service Workers, affiliated with the United Food and Commercial Workers. This was Local 115's first notification that Local Union No. 80, or any other labor organization, was interested in representing the Company's employees.

On September 11, Local 115 filed a charge with Region 4 of the Board alleging that the recognition of and negotiation of a contract with Local 80 violated the Act and placed the Company in contempt of the District of Columbia Circuit's outstanding order. *See* Supplemental Appendix, *infra*. The normal remedy for such misconduct would include voiding the contract between the Company and Local 80.

In a case which did not include the allegation of unlawful assistance, the Fourth Circuit has held that the negotiation of a contract does not "moot" Board orders with respect to pre-contract unfair labor practices. *NLRB v. Metalab-Labcraft, Division of Metalab Equipment Co.*, 367 F.2d 471, 472-473 (4th Cir. 1966), cited with approval, *NLRB v. Raytheon Co.*, 398 U.S. 25, 26-27 (1970). Here, where it is alleged that the Company's actions constitute contempt or further violations of the Act, the Company cannot seriously assert that its contract with Local 80 either moots the outstanding Board order or supports its Petition seeking to vacate the order.

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September 16, 1981

SUPPLEMENTAL APPENDIX

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September 11, 1981

Mr. Peter W. Hirsch, Director
National Labor Relations Board, Region 4
Suite 4400
William J. Green, Jr., Federal Building
600 Arch Street
Philadelphia, Pennsylvania 19106

Re: Haddon House Food Products, Inc.

Dear Mr. Hirsch:

Please list Hugh J. Beins and me as counsel for Teamsters Local Union 115, the Charging Party, in the enclosed charge.

As you are aware, Local 115 attempted to organize the Company's employees in November, 1975. Since then, the Company, Local 115 and the Board have been litigating Case No. 4-CA-7700. That case is currently before the Supreme Court on Petitions for Writ of Certiorari filed by Local 115 and the Company. Local 115's Petition was docketed on May 27, 1981. Local 115 is seeking a bargaining order despite its apparent failure to attain majority status, a remedy the Board has recently granted in United Dairy Farmers Ass'n, 257 N.L.R.B. No. 129 (1981).

On or about September 8, 1981, the Company filed the enclosed Supplemental Brief with the Court indicating that on July 8, it recognized Local 80, Food and Allied Service Workers, affiliated with the United Food and Commercial Workers, AFL-CIO.

We submit that the grant of recognition in these circumstances is unalwful and, perhaps, contemptuous. Under Midwest Piping and Supply Co., 63 N.L.R.B. 1060, 1069-1071 (1945), an employer violates the Act when it recognizes one of several rival unions whose claims raise a real question concerning representation. In Playskool, Inc., 195 N.L.R.B. 560 (1971), enf. denied, 477 F.2d 66 (7th Cir. 1973), the Board held that

"the sole requirement necessary to raise a question concerning representation within the meaning of the Midwest Piping doctrine ... is that the claim of the rival union must not be clearly unsupportable and lacking in substance." Here, Local 115's Petition, coupled with the Third Circuit's decision in United Dairy Farmers Cooperative Ass'n v. NLRB, 633 F.2d 1054 (1980) gave Local 115's claim sufficient vitality to, at a minimum, require the Company to notify Local 115 of another union's claim, as the Board would have done had another union filed a petition for an election. In these circumstances, the card check by the American Arbitration Association is no defense. Buck Knives, Inc., 223 N.L.R.B. 983, 985 (1976).

In addition, the Board has held that the prompt recognition and speedy negotiation of a contract with one of two unions, when contrasted with extensive litigation to oppose a rival union constitutes unlawful assistance and support of the favored union. Mears Coal Co., 175 NLRB 837, 845 (1969), enf'd in pert part, 437 F2d 502 (3d Cir. 1970); Packerland Packing Co. of Texas, Inc., 221 NLRB 1119, 1123 (1975), enf'd, 537 F2d 1343 (5th Cir. 1976). Moreover, we are unaware of the circumstances which led to the signing of authorization cards in support of Local 80. The Company's tactics against Local 115 suggest that it is not above actually assisting Local 80. We are attempting to investigate the signing of the cards.

Finally, we submit that the known facts seriously suggest that the Company has attempted to undermine the District of Columbia Circuit's order by recognizing another union without first remedying the unfair labor practices in 4-CA-7700. We are not aware that the Company posted or read the notice or reinstated the discharged employees before recognizing Local 80. The reinstatement of these employees could have altered Local 80's asserted majority status. The simple act of recognizing Local 80 in the face of a court order requiring Local 115 to have access to the Company's bulletin boards and property constitutes contempt of the order.

We urge you to refer the case to Washington for the possible institution of contempt proceedings while you investigate the charge.

If you have any further information, please contact John Morris at Local 115.

Very truly yours,

Jonathan Axelrod

Jonathan G. Axelrod

JGA:cmw
cc: Local 115
Norton Come, Esq.
Paul Elkind, Esq.
Enclosure

By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act.

3. Full Name of Party Filing Charge (If labor organization, give full name, including local name and number)

Teamsters Local Union No. 115

4a. Address (Street and number, city, State, and ZIP code)	4b. Telephone No.
2833 Cottman Avenue, Philadelphia, Pa. 19149	335-0100

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization) a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America

6. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By John Morris — Secretary-Treasurer
(Signature of representative or person filing charge) (Title, if any)

Address Same as above — Same as above (Telephone number) — September 11, 1981 (Date)

WILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

☆U.S. G.P.O. 1977-728-875/1012